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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 91

JOHN F. WILLIAMS,

Petitioner,

vs.

LAURENCE B. ROBBINS, ADMINISTRATOR, RECONSTRUCTION FINANCE CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

KEITH L. SEEGMILLER,
IRVING WILNER,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Your petitioner, John F. Williams, petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia in the above-identified case.

Opinions Below

No opinion was rendered by the District Court. The opinion of the Court of Appeals (R. 59) is not reported.

Jurisdiction

The judgment of the Court of Appeals sought to be reviewed was entered on February 25, 1954 (R. 62). A petition for rehearing was denied on March 26, 1954 (R. 71). The jurisdiction of this Court is invoked under the provisions of Section 1254 (1) of Title 28 of the United States Code.

Question Presented

1. Whether the requirements of Statute (5 U.S.C. 652, Act of August 24, 1912, as amended) and Regulation (5 C.F.R. [Cum. Supp. 1952] Section 9.102) that for removal of an employee from a position in the classified civil service of the United States charges against him must be stated "specifically and in detail" are met by the following charges:

> "1. You have interfered or attempted to interfere with officials of the Corporation by endeavoring to influence their judgment and recommendation with respect to loan applications under consideration. (Contained in a letter dated October 26, 1951)
>
> "The specific instances where you interfered or attempted to influence the judgment of others are Binkley Manufacturing Company, Warrenton, Missouri; Highway Trailers, Edgerton, Wisconsin; and Skybrook Farms, Inc., Henderson, South Carolina. (Contained in a letter dated November 15, 1951)
>
> "2. In passing on particular loans, you have failed to consider all important and relevant data. This has led to actions on the part of the Corporation which have been severely criticized and has made it impossible to rely upon your judgment, findings and recommendations. (Letter dated October 26, 1951)
>
> "The specific instances where you failed to consider all important and relevant data are Central Iron & Steel Company, Harrisburg, Pennsylvania, American Lithofold Corporation, St. Louis, Misrouri, and Kaiser-Frazer Corporation, Willow Run, Michigan." (Letter dated November 15, 1951)

Statutes and Regulations Involved

Section 652, Title 5, U. S. Code, as amended, provides:

"No person in the classified civil service of the United States shall be removed or suspended without pay

therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall have notice of the same and of any charges preferred against him, be furnished with a copy of such charges, be allowed a reasonable time for filing a written answer to such charges with affidavits, and be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made a part of the records of the proper department or agency, as shall also the reasons for reduction in grade or compensation; and copies of the same shall be furnished, upon request, to the person affected and to the Civil Service Commission."

Regulations of the United States Civil Service Commission (5 C.F.R. Section 9.102 [Cum. Supp. 1952]) provide:

"No employee, veteran or nonveteran, shall be separated, suspended, or demoted except for such cause as will promote the efficiency of the service and for reasons given in writing. The agency shall notify the employee in writing of the action proposed to be taken. This notice shall set forth, specifically and in detail, the charges preferred against him. The employee shall be allowed a reasonable time for filing a written answer to such charges and furnishing affidavits in support of his answer. He shall not, however, be entitled to an examination of witnesses, nor shall any trial or hearing be required except in the discretion of the agency. If the employee answers the charges, his answer must be considered by the agency. Following consideration of the answer, the employee shall be furnished at the earliest practical date with a written decision. If the agency determines that removal or

other action is warranted, the employee shall be notified in the decision of the reasons for the action taken and its effective date. Copies of the charges, notice of hearing (if any), answer, reasons for removal, or other action, shall be made a part of the records of the department or agency concerned."

Statement of the Case

For a long time prior to November 25, 1951, the petitioner, John F. Williams, was employed by the Reconstruction Finance Corporation as a permanent civil service employee under the classified civil service of the United States. He held the position of Loan Examiner, Grade GS-15. He was involuntarily removed from that position effective at the close of business on November 25, 1951. His removal was predicated upon charges contained in two letters. One letter dated October 26, 1951, advised the petitioner as follows:

"Dear Mr. Williams:

"This is to advise you that it has been found necessary to terminate your service as Loan Examiner, Grade GS-15 with the Reconstruction Finance Corporation for the following reasons:

"1. You have interfered or attempted to interfere with officials of the Corporation by endeavoring to influence their judgment and recommendation with respect to loan applications under consideration.

"2. In passing on particular loans, you have failed to consider all important and relevant data. This has led to actions on the part of the Corporation which have been severely criticized and has made it impossible to rely upon your judgment, findings and recommendations.

"Accordingly, you will be retained in an active duty status for thirty days, but will be placed on annual leave beginning October 26, 1951.

"If you wish to reply to this letter, you should do so

in writing by November 5, 1951, furnishing us affidavits in support of your reply. Should you make no reply, or if after consideration of your reply, it is deemed insufficient, your services will be terminated at the close of business November 25, 1951.

"Very truly yours," (R. 5)

A second letter dated November 15, 1951, further advised petitioner as follows:

"Dear Mr. Williams:

"This is in reference to your letter of November 5, 1951 in which you ask for specific instances where you attempted to influence officials of the Reconstruction Finance Corporation and where you failed to give due consideration to all important and relevant data.

"The specific instances where you interfered or attempted to influence the judgment of others are Binkley Manufacturing Company, Warrenton, Missouri; Highway Trailers, Edgerton, Wisconsin; and Skybrook Farms, Inc., Henderson, South Carolina.

"The specific instances where you failed to consider all important and relevant data are Central Iron and Steel Company, Harrisburg, Pennsylvania, American Lithofold Corporation, St. Louis, Missouri and Kaiser-Frazer Corporation, Willow Run, Michigan.

"Any data that you may wish to submit in your behalf for our consideration should be received in this office not later than November 21, 1951.

"Very truly yours," (R. —6)

In his reply, bearing date of November 20, 1951, petitioner advised respondent as follows:

"Dear Mr. Fisher:

"Your letter of November 15 does not provide me with the information for which I asked and believe I am entitled to receive. I am therefore unable to take appropriate steps to refute the unjustified charges set forth in your letter of October 26, 1951. As indicated in my letter of November 5, it is reasonable to

> assume that in support of the charges you have lodged against me you have in mind specific instances in which I have interfered or attempted to interfere with certain persons by endeavoring to improperly influence them, and that in other instances I have not considered important and relevant data by reason of which the R.F.C. has taken action for which it has been severely criticized, and that, therefore, it is impossible to rely upon my judgment, findings, and recommendations. I am fully confident that I can satisfactorily explain any instance thought by you to justify my removal from service, provided you will only disclose to me the instances which you have in mind.
>
> "/s/ John F. Williams" (R. 7)

The record conclusively shows that at no time prior to the effective date of petitioner's removal from the civil service was he furnished with the name of any official with whom he is alleged to have interfered, or the place, date, or any circumstance surrounding such interference, in any of the three cases or loans cited by respondent. The record is likewise conclusive that at no time prior to the effective date of his dismissal from the civil service was petitioner furnished with any details, descriptions, or any identification whatsoever relative to the all-important and relevant data which petitioner is alleged to have failed to consider in any of the three cases or loans enumerated by respondent in its letter of charges.

Petitioner appealed from that removal action to the United States Civil Service Commission asserting *inter alia* that the charges were not stated with the specificity and detail required by statute and regulation (supra, pp. 2-4). The Commission affirmed the decision of the agency. Petitioner then brought suit in the United States District Court for the District of Columbia against the Administrator of the Reconstruction Finance Corporation. In this action he sought a declaratory judgment that his removal

from his position was invalid for failure to comply with the procedural requirements of the statute and regulation (R. 2). The case was submitted in the District Court upon cross motions for summary judgment and from a judgment of the District Court denying the motion of the petitioner and granting that of the respondent (R. 37), an appeal was taken to the United States Court of Appeals for the District of Columbia Circuit (R. 37). The Court of Appeals affirmed the judgment of the District Court (R. 59), resting the affirmance upon a holding that the charges, or at least one of them, satisfied the requirements of the statute and regulation for specificity and detail. (R. 59). On March 26, 1954, the Court of Appeals denied petitioner's motion for a rehearing (R. 71).

Specification of Errors

The Circuit Court of Appeals erred:

1. In holding that the charges against petitioner satisfied the requirements of the applicable statute and regulation that charges preferred against a civil service employee for removal of him from his position must be provided to him in writing specifically and in detail.

2. In affirming the judgment of the District Court.

Reasons for Granting the Writ

(a) The decision of the Circuit Court of Appeals is upon an important question of federal law which has not been but should be settled by this Court.

The decision of the Court of Appeals drastically restricts and in effect, we submit, obliterates entirely the statutory right of civil service employees to defend against actions to remove them from their positions. The holding in this case is consistent only with the view that Congress did a futile thing in enacting the statute relied upon, since,

as it is now construed, the law would provide no substantial right whatever. The decision impinges upon the right in three particular respects.

First, under the ruling in this case, charges may be so general as to afford the employee no opportunity whatever to identify the gravamen of the charge against him and no opportunity, therefore, to determine the nature of defense required to refute the charge. The result reached by the Court below was rested in part upon supposed facts as reflected in the following quotations from the opinion:

> "Appellant demanded that he be given 'a specific and detailed list of the loans and *instances* in which I am alleged to have failed to consider all important and relevant data' and the Administrator promptly replied, specifying several *such*. * * * The Corporation determined that the appellant's failure to consider all important and relevant data in *specified instances* made it impossible to rely upon his judgment." (Emphasis supplied)

Examination of the letters of charges (supra, pp. 4-5) will disclose, however, that while the Administrator provided appellant a list of the *loans*, there was no specific and detailed list of *instances*, and we respectfully submit that the result reached in the Court below rested upon lack of distinction between cases and instances. In each of the cases mentioned in the letters of charges, the agency maintained a voluminous file which reflected numerous actions by petitioner over a period of years on numerous different dates with numerous different people (R. 22). Since no person thought to have been influenced was named in the charges and no data thought to have been overlooked was identified, and since no date or place was indicated, even approximately, there was a failure to specify instances as requested. Petitioner could not have defended with any assurance that his defense would have joined issue on the

facts motivating the agency in proposing his removal. He might have resorted to the unjustly burdensome procedure of providing refutation as to every person he had contacted in connection with any of the named cases and in connection with every item of data contained in the files of any of the named cases. Even so, he may well have missed the point. The charge may have been based erroneously upon supposed influence of a person whom he had not in fact contacted, or upon supposed neglect of data which had not in fact been in the file or otherwise made available to him.

Second, under the decision of the Court below, it is enough if one of several charges measures up to the standard of specificity and detail even though there is no showing that the removal was in fact based upon such charge. This again would effectively prevent any real opportunity for the employee to defend himself. If he refuted the specific charge, he could still be removed upon remaining nonspecific charges as to which he had no opportunity to defend.

Third, the opinion ignores the requirement of the statute that the charges be in writing and made part of the permanent record. The Court below seems to have relied substantially upon its observation that "much had gone on within the Corporation before the letter was written, appellant had been interviewed, specific cases had been called to his attention, conferences had been had with respect to his memoranda of explanation and otherwise."

To have the charges stated and permanently recorded in writing—and not oral in part—is an important right. Such a requirement is a well recognized guarantee of regularity of official action. More important, whatever value oral statements by an immediate superior may have at the initial stage, any such value is lost for the purposes of review by the head of the agency or by the Civil Service Commission or by the Courts. Petitioner is at a distinct disad-

vantage in this proceeding, as is the Court in determining his rights, if the matter is to be governed by claimed oral statements made to him two or more years ago. A far sounder basis, and the one which we believe the statute requires, is measurement of his rights by the written record contemporaneously made and preserved.

Whether the statutory protections for federal employees are to be restricted as the Court below has determined is a matter of vast importance both to the large number of such employees individually and to the career service of the government in general. We believe it should be settled by decision of this Court.

(b) The decision of the Court of Appeals is probably in conflict with the decision in *Blackmar* v. *United States,* decided by the United States Court of Claims on April 6, 1954, Nov 170-52, — C. Cl. —. The decision in the present case is also probably in conflict with decisions of other panels of the same Court. *Money* v. *Anderson,* — U.S. App. D. C. —, 208 F(2) 34; *Manning* v. *Stevens,* — U. S. App. D. C. (Dec. 23, 1953); *Deak* v. *Pace,* 88 U. S. App. D. C. 50, 185 F(2) 997; *Mulligan* v. *Andrews,* — U. S. App. D. C. — (Decided February 18, 1954). The lack of harmony between the decisions of the Circuit Court of Appeals for the District of Columbia is of special concern in view of the fact that, for procedural and jurisdictional reasons, the overwhelming proportion of appeals involving the suspension or dismissal of civil service employees comes before this Court. Cf. *Money* v. *Wallin,* et als., (C.C.A. 3) 186 F(2) 411, cert. den. 341 U. S. 935.

We submit that the result reached in the present case is in conflict with the decision in *Blackmar* v. *United States,* decided by the United States Court of Claims on April 6, 1954, No. 170-52, — Ct. Cl. —. A distinction is not warranted upon the ground that the plaintiff there was a veteran, relying upon the Veterans Preference Act, while the

petitioner is a nonveteran relying upon another statute. Here, as there, reliance is placed upon a requirement that charges be stated "specifically and in detail," so that the particular rights asserted in both cases are identical.

The conflict between the present case and the *Blackmar* case is twofold.

First, there is conflict as to whether the statutory requirement is satisfied by charges, part of which comply with the statute and part of which do not. In its opinion in this case, the Court stated:

> "Whether this first 'reason' be sufficiently specific or otherwise, our decision may properly rest upon a second reason cited by the Administrator, and since both reasons were independent, proper action under either would be adequate."[1]

This necessarily assumes that we cannot ascertain from the record whether the Administrator relied upon one or the other of the stated charges or both of them, since the record provides no information on this point and no claim has been made that it does.

In the *Blackmar* case, the Court held that while some of the charges were set forth with sufficient specificity and detail, some were not. The Court noted this circumstance and commented upon it as follows:

> "The findings and recommendations of the dissenting member of the Board of Appeals and Review, on which the decision of the Commission was based, indicates strongly that the writer was inclined to the view that all the charges were set out in sufficient detail. While some of them were, certainly some of them were not set out 'specifically and in detail' as required by the statute. * * * Some portions of the charges against Mr. Blackmar were defective. Where

[1] Compare similar reasoning in *Deviny* v. *Campbell*, 90 U. S. App. D. C. 171, 194 F(2) 876.

> defective charges were explicitly excluded by the administrative adjudicators in their consideration of the merits, we have declined to intervene. *Engelhardt* v. *United States, supra.* However, in the absence of a clear statement from the Commission as to which charges formed the basis of its determination on the merits, we can only rely on the record before us. Our conclusion from that record, which included the dissenting opinion of the Board of Appeals and Review, is that plaintiff's discharge was based, in part, on charges which did not meet the statutory requirements of specificity. If it is argued that the administrative record is susceptible to an interpretation other than that which we have given, the answer is that all doubt could have been avoided by a more comprehensive decision by the Commission."

A second point of conflict between the *Blackmar* case and the present case is that of the degree of specificity and detail required. In the present case, petitioner was charged with endeavoring to influence the judgment of other officials in connection with three cases and with failure to consider all important and relevant data in connection with three other cases. The cases were identified only by name of a borrower from the Corporation. The file in each of these cases was voluminous, and with respect to each, petitioner had taken numerous actions in connection with many other officials over a period of many years. In the *Blackmar* case, where the employee likewise handled a large number of claims, the charge held to be too general was "Other awards approved by you consist of numerous errors as to dates, erroneous procedure, wrong names, and erroneous payments." The Court of Claims stated:

> "It appears that plaintiff handled hundreds of veterans' claims cases during the period specified in the charge. The statement that 'other awards * * * consist of numerous errors' does not, under the circum-

> stances, afford reasonable notice to plaintiff as to what he must refute. A circumstance of importance here is that many of the errors later alleged at the hearings were on details such as wrong dates, misspelled names, etc. There would seem to be no great difficulty in specifying such alleged derelictions and such detailed information was doubtless in the agency's possession at the time, since it now urges that its awareness of these facts prompted the dismissal action. We are impelled to the conclusion that if plaintiff's dismissal was based on this general charge the statute was violated."

Similarly in the present case, the charge of influencing other officials, if well founded, must have been related to particular officials in relation to particular transactions well known to the agency, and the charge of failing to consider all important and relevant data must have been related to particular data. Such general charges, if well founded, cannot arise apart from particular instances.

We submit also that the decision in this case is in direct conflict with decisions of other panels of the same Court. *Money* v. *Anderson,* — U. S. App. D. C. —, 208 F(2) 34; *Manning* v. *Stevens,* — U. S. App. D. C. (Dec. 23, 1953); *Deak* v. *Pace,* 88 U. S. App. D. C. 50, 185 F(2) 997. The purported distinction of the present case from the other cases cited on the ground that the charges is the earlier cases "involved * * * derelictions, possibly criminal in character," is not supported by anything in the statute or regulation. The statute (supra, p. 2) plainly says that "*No* person in the classified civil service of the United States" shall be removed from his position except in accordance with the procedure there provided. It further provides that an employee shall have "notice * * * of *any* charges" and an opportunity to answer "*such* charges" (emphasis supplied), generally, without distinction as to the nature of the charges. The regulation is equally all

inclusive. It provides that "no employee" shall be removed from his position except in accordance with that procedure (supra, p. 3). We believe that these unequivocal and mandatory provisions preclude any difference in the rights granted as between charges involving "dereliction" and those not involving "dereliction." The true test is that stated by the Court in the *Deak* and *Money* cases to the effect that the charges must be sufficiently specific to provide the employee a reasonable opportunity to defend against them. In the *Money* case, it was stated as follows:

> "Charges preferred for removal must be specific enough to provide a fair opportunity for refutation by the innocent who have no knowledge of the conduct charged, as well as by the guilty who do possess such knowledge."

The decision in the present case cannot be reconciled with that language. Furthermore, while the cases of *Deak* v. *Pace* and *Money* v. *Anderson,* supra, lay down an understandable and reasonable standard for the guidance of federal officials in the discharge of their duties with regard to the administration of the United States Civil Service laws and regulations, the effect of the opinion of the Court below in the case at bar is to destroy that standard without furnishing another, adequate as a substitute. What conduct, short of criminal, involves "derelictions" is a question which invites unlimited speculation, and which does not admit of a definition for practical application. The law is thus left in a state of confusion which should be clarified by decision of this Court.

In any event, the reading into the statute of distinctions based upon the character of the charges warrants review and final determination of the matter by this Court.

Conclusion

For the reasons stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

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Counsel for Petitioner.